

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION

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HONORABLE MAAME EWUSI-MENSAH FRIMPONG, DISTRICT JUDGE PRESIDING

UNITED STATES OF AMERICA,)
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Plaintiffs,)
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)
)
vs.) No. 23-00059-MEMF
)
)
)
CAROLINE J. HERRLING,)
)
)
Defendant.)
_____)

REPORTER'S TRANSCRIPT OF PROCEEDINGS

SENTENCING [79]

LOS ANGELES, CALIFORNIA

FRIDAY, MARCH 15, 2024

MARIA R. BUSTILLOS
OFFICIAL COURT REPORTER
C.S.R. 12254
UNITED STATES COURTHOUSE
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SENTENCING HEARING [79]: PAGE
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1 LOS ANGELES, CALIFORNIA; FRIDAY, MARCH 15, 2024

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3 (COURT IN SESSION AT 2:07 P.M.)

4 THE COURTROOM DEPUTY: Calling item two,
5 LA CR 23-00059-MEMF: *United States of America v.*
6 *Caroline Joanne Herrling.*

7 Counsel, please stand and state your
8 appearances, please.

9 MR. BROWN: Good afternoon, Your Honor.
10 Andrew Brown for the Government. With me at counsel
11 table are the two case agents, LAPD Detective
12 Mark O'Donald and Postal Inspector Lyndon Versoza.

13 MR. KESSEL: Good afternoon, Your Honor.
14 Attorney Alex Kessel. I'm present with my client,
15 Ms. Herrling.

16 THE COURT: Good afternoon to counsel.
17 Good afternoon, Ms. Kessel -- Ms. Herrling. Good to see
18 you. Good afternoon to the agents. Could I see counsel
19 briefly at sidebar off the record?

20 (Sidebar off the record.)

21 THE COURT: Okay. We are on the record. And
22 we're here for the sentencing in this matter. And I
23 understand that we have one individual,
24 Miracle Williams, who will joining us via Zoom. The
25 clerk will advise me as soon as she's on the Zoom. To

1 my understanding, we don't have anybody on the Zoom
2 right now.

3 Okay. So with that, Ms. Herrling, I appreciate
4 this is probably a difficult day for you. Let me
5 explain what's going to happen: I'm going to go over
6 everything that I've reviewed. There's a lot of
7 material I've reviewed in this case. And I'm going to
8 hear from both parties regarding the guidelines
9 calculation and regarding the sentence. And then I'll
10 make my sentencing guidelines calculation. I'll resolve
11 a number of the disputes that the parties have about the
12 guidelines calculation. And while I'm hearing from the
13 parties, I'll hear from you, as well, if you wish to be
14 heard. And after I make the sentencing guidelines
15 calculation, I'll take probably a 10- to 15-minute
16 recess to make sure I've considered what everything has
17 said this afternoon with respect to the sentence, and
18 then I'll return to announce the sentence.

19 If at any point, you need a break or you need
20 to speak privately with Mr. Kessel, then please
21 interrupt me or ask Mr. Kessel to interrupt me,
22 understood?

23 THE DEFENDANT: Yes.

24 THE COURT: Okay. Thank you. Okay. So,
25 Counsel, I have read and considered the following, which

1 includes the position papers filed by the parties and
2 any other documents provided -- just a moment -- so I
3 have considered the presentence report, which is found
4 at ECF 37; the revised presentence report found at
5 ECF 55; the addendum to the presentence report found at
6 ECF 56; probation's recommendation found at ECF 36. I'm
7 going to need to close the courtroom at this moment to
8 discuss confidential material. So I'm going to ask that
9 the clerk close the Zoom, and also close the courtroom.
10 And I am going to ask that any members of the public
11 that are present, exit the courtroom, and we'll reopen
12 the courtroom when we are no longer in the sealed
13 proceeding.

14 (Sealed proceeding filed separately.)

15 (Whereupon, the record is unsealed:)

16 Okay. Mr. Kessel, have you had enough time to
17 read all of these documents and review them with your
18 client?

19 MR. KESSEL: I have, Your Honor.

20 THE COURT: Did you explain their contents to
21 her?

22 MR. KESSEL: We went over the documents, yes.

23 THE COURT: Okay. And let me just ask you to
24 speak into the microphone. If you want to remain seated
25 for these preliminary questions, that's fine.

1 MR. KESSEL: It's just a habit, Your Honor.

2 THE COURT: Yeah, no, it's fine. I will --

3 MR. KESSEL: I have reviewed all the documents
4 with my client.

5 THE COURT: Okay. And you explained them to
6 her?

7 MR. KESSEL: Yes.

8 THE COURT: Okay. Do you have any concerns
9 about her ability to understand them?

10 MR. KESSEL: None whatsoever.

11 THE COURT: Okay. And then, Counsel, if you
12 could pull the microphone -- the -- in front of
13 Ms. Herrling, if you can pull that towards her. She can
14 pull it, thank you. Ms. Herrling, did you receive all
15 of those documents that I mentioned?

16 THE DEFENDANT: Yes.

17 THE COURT: And did you read them?

18 THE DEFENDANT: Yes.

19 THE COURT: Do you need anymore time to read
20 them?

21 THE DEFENDANT: No.

22 THE COURT: Did your attorney explain them to
23 you?

24 THE DEFENDANT: Yes, he did.

25 THE COURT: Did you understand them?

1 THE DEFENDANT: Yes, I did.

2 THE COURT: Okay. Turning to Defense counsel,
3 and maybe you want to take the podium at this time...

4 Yes. The portion of the transcript from when I
5 reopened the courtroom is unsealed.

6 Thank you.

7 Okay. So, Mr. Kessel, normally, I would ask if
8 there is anything you want to change or contest in the
9 presentence report, and I do understand that you have a
10 number of objections. As I indicated at sidebar, I do
11 have a list of what I think the various objections and
12 issues are. If it's all right with you, I will walk
13 through the list unless you would prefer to go through
14 it in whatever order you'd prefer you.

15 MR. KESSEL: No, Your Honor, that's fine.

16 THE COURT: Okay. Let me start with -- I think
17 one of the preliminary questions or overarching issues,
18 one thing I just want to make clear: I identified for
19 the parties all the things that I reviewed. One of the
20 objections that the Defense had to the Government's
21 position paper was the Government's discussion of how
22 much time a defendant sentenced to a given sentence is
23 likely to serve. And I just wanted to make it clear to
24 the parties that I will not be considering that. I
25 don't think it's appropriate to do so for reasons I can

1 explain at length, the simplest explanation is the
2 Court's understanding is that most of the items that the
3 Government has identified, the Court understands are
4 Congress' determinations as to good time credit that
5 defendant should receive. So, to this Court, it appears
6 inappropriate for the Court to subvert Congress' intent
7 in giving defendants credit for doing certain things and
8 taking that into account and increasing the sentence on
9 that basis. So I just want it to be clear that the
10 Court is not going to be considering that information.

11 The next sort of overarching issue I think that
12 we need to address is the standard of proof. And before
13 I move on, I trust the Government doesn't need to be
14 heard on the issue of the -- the time served.

15 MR. BROWN: No, Your Honor.

16 THE COURT: Okay. So turning to the issue of
17 the standard of proof: In your papers, Mr. Kessel, you
18 indicate that the standard is clear and convincing. And
19 you cite to a case on that. The Government indicates by
20 citation to various cases and the sentencing guidelines
21 that it should be a preponderance of the evidence
22 standard. Based upon my review, it does appear that it
23 should be a preponderance of the evidence standard, but
24 I did want to give you the opportunity to be heard on
25 that.

1 MR. KESSEL: I agree in this sense, Your Honor,
2 that having done many, many sentencings, I believe
3 preponderance of the evidence is the normal standard.
4 There is, as I indicated, a Ninth Circuit case that
5 talks about a higher standard of proof when -- when a
6 substantial increase in adjustments, which I think is
7 applicable here, comes into play. That was -- that was
8 the reason I -- I referenced, but I would agree as to a
9 particular adjustment, my main concern was the overall
10 adjustments and their effect on an ultimate sentence,
11 Your Honor, as to standard of proof, and also the
12 argument about the lack of proof to substantiate some of
13 the factual basis that the Government uses to support
14 and, obviously, adopted by Probation, would support some
15 of the adjustments.

16 THE COURT: Understood. Okay. And I -- thank
17 you for the case law that you provided. The Court's
18 reading of that case law is that where conduct is used,
19 that -- let's get the language of the case: And the
20 case that you cited to was U.S. v. Mezas, M-E-Z-A-S De
21 Jesus, 217 F.3d 638, and just reading from the case, as
22 a general rule at sentencing, due process does not
23 require higher standard of proof than preponderance of
24 the evidence to protect a convicted defendant's liberty
25 interest in the accurate application of the guidelines.

1 However, when a sentencing factor has an
2 extremely disproportionate effect on the sentence,
3 relative to the offense of conviction, a higher standard
4 of proof may be required. And the facts of that case,
5 obviously, involved a relatively minor crime and then
6 there was an uncharged kidnapping that was added. So in
7 the Court's view, that is not the case here where the
8 sentencing factors have an extremely disproportionate
9 affect on the sentence relative to the offense of
10 conviction within the nature of the offense of
11 conviction and the sentencing factors. So it does
12 appear to the Court that the preponderance of the
13 evidence standard should apply.

14 Turning to -- I would also just state in case
15 the parties need to be heard on this: At various
16 points, counsel points to the lack of evidence on
17 certain -- of the factors that Probation considered.
18 For clarification, I wasn't sure if you were -- your
19 objection was that the PSR doesn't refer to the evidence
20 or the evidence itself is insufficient.

21 MR. KESSEL: The latter, Your Honor.

22 THE COURT: Okay, okay. And I will just say at
23 the outset, I think the parties would agree to me the --
24 agree with me that at sentencing, hearsay was an indicia
25 of reliability is admissible. Would you agree with

1 that?

2 MR. KESSEL: Yes.

3 THE COURT: Okay. Okay. So then let's turn to
4 what I understand to be the first substantive objection,
5 which is that Ms. Herrling should be granted the
6 Zero-Point Offender reduction. So let me hear from you
7 on that.

8 MR. KESSEL: Well, the -- it's a new -- it's a
9 new change, and there's, obviously, some prerequisites
10 that need to be in play and --

11 THE COURT: Sorry, Mr. Kessel. Just one
12 moment.

13 Thank you. So, Mr. Kessel, it appears that the
14 witness that we anticipated is now on the Zoom. We can
15 proceed or if -- if you're okay with us taking a break
16 to hear from her and then she can leave the Zoom. It's
17 up to you.

18 MR. KESSEL: Yes, thank you for inquiring, and
19 I don't have an objection, other than, obviously, later
20 argue the weight of what she's saying, but as to her
21 ability and to address Court, no objection and to her --
22 to address the Court now, I have no objection.

23 THE COURT: Okay. Thank you for that. Okay.
24 So the clerk will get her on the line.

25 THE COURTROOM DEPUTY: Ms. Williams, can you

1 hear me? This is Sheila English, the courtroom Deputy
2 Clerk. Unmute your phone. You need to unmute your
3 phone in order for us to hear you.

4 I think we lost her.

5 THE COURT: Okay.

6 THE COURTROOM DEPUTY: We lost her.

7 THE COURT: Okay. So we're having some
8 technical difficulties. Thank you for your patience.
9 We'll have you resume, Mr. Kessel, and we'll wait until
10 there is another appropriate break. I think you were
11 addressing the Court's question about the Government has
12 indicated -- Probation has indicated that the Zero-Point
13 Offender reduction should not apply, because
14 Ms. Herrling does have criminal history points and, in
15 addition, she is subject to the leader points as well as
16 the -- the crime purportedly caused a death. I think
17 those are their basis. So let me let you be heard.

18 MR. KESSEL: As far as the prior criminal
19 history, Your Honor, I think the Court has always the
20 option to find that the criminal history, which, as
21 reported, was a trespass for one point back some time
22 ago, Your Honor. And that was at least the criminal
23 history we're asking you to set that aside. It appeared
24 to be a relatively very minor charge and, again, it's
25 remote in time to the events in question here.

1 As far as the -- I would agree that -- but if
2 you look at the statute or the amendment, it has in
3 there, if there's a leadership role and evidence of a
4 continuing criminal enterprise, I believe is the
5 language, which requires a finding that the defendant is
6 a leader, organizer, or had an aggravating role, which
7 we contest here. So that has to be determined by the
8 Court, but there's no indication of a continuing
9 criminal enterprise. And I looked at that yesterday.
10 And I think it's in the conjunctive, Your Honor, so both
11 prerequisites to excluding a defendant has to be proven
12 at the time. I didn't address the cause -- the -- a
13 person's death, because I don't think that's the issue
14 here at all with my client. I know this issue of a
15 decedent, Mr. Wilding's body, is relevant to -- and, at
16 least, is involved in a lot of the issues here,
17 including an appropriate sentence, but there's never
18 been an allegation at all and no evidence to suggest
19 that my client caused any death of -- of Mr. Wilding.

20 THE COURT: And so just for clarification, with
21 respect to the not engage in a continuing criminal
22 enterprise, what is your understanding of why that would
23 not apply?

24 MR. KESSEL: Are you asking me?

25 THE COURT: Yes.

1 MR. KESSEL: Well, because continuing criminal
2 enterprise, it has a particular meaning, one I would
3 first argue, due process. We have never been at all
4 apprised of the Government's theory that this is a
5 continuing criminal enterprise. Typically, that you see
6 a lot of times in drug offenses with multiple persons
7 charged. You see that, again, to RICO, R-I-C-O,
8 investigations, and indictments, but I have never
9 thought of this, Your Honor, in any sense of a -- of a
10 continuing criminal enterprise. You may see it
11 differently. I'm telling you the lack of notice and,
12 more importantly, I didn't address that in my moving
13 papers, Your Honor. You may find that it is a
14 continuing criminal enterprise, but I want the Defense's
15 objections to be clear both on due process, lack of
16 notice, and any evidence to support a continuing
17 criminal enterprise, as that's defined in the law and I
18 believe under the appropriate statute, which has a
19 separate provision for continuing criminal enterprise.

20 THE COURT: Thank you.

21 And then the death cause -- I think the
22 Government's position is that the death cause is that of
23 Mr. Tascon.

24 MR. KESSEL: Right. Well, I have a lot of
25 concerns with that allegations. I don't think there's

1 any evidence to suggest that my client directly caused
2 the death as I viewed that as the crime of murder,
3 homicide, in any way, Your Honor.

4 As you know, Mr. Tascon apparently, and I've
5 received some of the reports from the state of Texas, I
6 believe, that surround his death. It was deemed to be
7 suicide and as I indicated in our -- I want to get the
8 correct document, Your Honor. It was a reply to one of
9 the Government's papers where they raised, obviously, as
10 an aggravating circumstance, my client's purported
11 causation, if you will, of Mr. Tascon's unfortunate
12 death. I supplied the Court with the police reports
13 from the Texas authorities, as well as some other
14 individuals who were contacted, and bottom line is with
15 respect to countering the idea that my client had
16 anything to do with that, Mr. Tascon apparently had a
17 history of mental illness. He, apparently, by his own
18 lawyer's admissions to the police -- as listed, again,
19 in the police report, and, Your Honor, it just talked
20 about hearsay being competent at least if it's accurate
21 and at least has indicia of reliability. These police
22 reports were provided to me by the Government. So I
23 have no reason to suggest that they're inaccurate to any
24 degree that the Court can't rely on them, but a couple
25 of things that came out of there, Your Honor, is that --

1 and no disrespect to Ms. Williams, this is the purported
2 wife. And apparently, as an aside, I learned that
3 Mr. Tascon was also the subject of a restraining order
4 by another woman, who claimed she was his wife and lived
5 in the Tascon residence here in the Central District of
6 California and sought a restraining order against
7 Mr. Tascon, or the other way around. The point being
8 that I don't know Ms. Williams' purported status to
9 Mr. Tascon, but my point is the day he was found shot,
10 she was nowhere in sight. She had left, apparently, out
11 of the jurisdiction. One, he had a mental illness that
12 developed long before the house in California was
13 fraudulently sold, and I want to use that word
14 fraudulently sold, because that's uncontested, but more
15 importantly, Mr. Tascon had previously attempted suicide
16 apparently by, according to police reports, at one
17 point, jumping into a river or a creek that was
18 unsuccessful. And, then, again, in the police reports,
19 Your Honor, so this is coming -- nothing, but from law
20 enforcement, the day they interviewed --

21 THE COURT: Sorry, Counsel, just for the
22 record, if you can point to which of your filings has
23 that police report attached.

24 MR. KESSEL: Yes, Your Honor. It's -- I'm
25 sorry. I want to get you to the document -- it was

1 filed under seal, Your Honor. So it doesn't have a
2 number. It was filed March 7th, 2024, and it was
3 entitled, Defendant's Reply to Government's Sentencing
4 Position and Recommendations. I hope that's a
5 sufficient reference, Your Honor.

6 THE COURT: Yes.

7 MR. KESSEL: And it was --

8 THE COURT: Exhibit C?

9 MR. KESSEL: Correct. And -- and the police
10 report in question is Exhibit C, Your Honor.

11 THE COURT: Thank you.

12 MR. KESSEL: And that's a series of reports.
13 And at least what I gleaned from that -- and --

14 THE COURT: And, Counsel, just so that the
15 record is clear, given what we are discussing right now,
16 even though this portion was filed under seal, you --
17 it's acceptable to discuss this in open court?

18 MR. KESSEL: This particular subject matter, I
19 have no objections.

20 THE COURT: Okay. Please proceed.

21 MR. KESSEL: Thank you, Your Honor.

22 THE COURT: And so I see that it's ECF -- the
23 exhibit is ECF 72.

24 MR. KESSEL: Thank you, Your Honor.

25 And the upshot, which I think is going to come

1 up again, because Mr. Tascon's death and his connection
2 to my client, I think there's a big disconnect,
3 Your Honor, how unfortunate it is.

4 The other thing that the -- that came out of
5 those police reports by interviews of Mr. Tascon's own
6 lawyers or representatives in Texas is that he had an
7 estate that was worth at least \$9,000,000. I say that
8 only because the Government has indicated and
9 speculated, and I think a lot of it is speculation,
10 because we never know why -- if it is suicide, we never
11 know why somebody kills themselves, unless -- I don't
12 know -- I haven't been given in evidence any suicide
13 note where he laid out his state of mind and mental
14 state at the time he took his life enough that we can
15 have some meaning into his intent, but be that as it
16 may, the point is the Government tried to infer that he
17 killed himself, because he lost his only pride
18 possession, which was his house here in California. And
19 I don't think that's necessarily true, because by his
20 own attorney's accounts, Mr. Tascon had a very, very
21 well-funded trust account that he lived off of. And I,
22 again, Mr. Tascon's personal life would probably never
23 come up if the Government -- I'm not saying and
24 rightfully, but they did -- they raised the issue about
25 the nexus between my client and Mr. Tascon's death. So

1 these are the reasons why with respect to going back to
2 our initial conversation about exclusions from zero
3 criminal history and the defendant causing another's
4 death, Mr. Tascon, I don't believe is supported by the
5 evidence, Your Honor.

6 THE COURT: Okay. And just -- just so I want
7 to give you an opportunity to respond to this, because I
8 understood the Government to be arguing -- leaving
9 aside -- well, you've mentioned that he had a \$9 million
10 estate. You've also mentioned that Mr. Tascon was
11 living off of a trust. What I understood the argument
12 to be -- what the Government's argument to be was that
13 the only possession that he had to leave to his wife,
14 Ms. Williams, was this house, and that's what caused him
15 so much distress. That's how I understood it.

16 And so when you indicate that the estate was
17 \$9 million, you're indicating that that would controvert
18 the idea that he only had the house to leave to her?

19 MR. KESSEL: I would -- in regard of what the
20 Government's saying, I've never seen -- and I don't know
21 what Mr. Tascon left to Ms. Williams and whether she was
22 even entitled to the house and whether there were, as I
23 indicated, I understood Mr. Tascon might have been
24 married to another woman, first name Olivia, last name I
25 will put in the record K., but -- and who made claims as

1 well to Mr. Tascon's property, Your Honor. So I -- I
2 can't speak beyond that. I'm only indicating -- and I'm
3 trying to address the issue pertinent to my client is
4 Ms. Herrling's causation, if you will, of causing
5 Mr. Tascon's death.

6 THE COURT: Understood. And I think maybe
7 Ms. Herrling wanted to address you briefly.

8 MR. KESSEL: I think she wanted to send me a
9 note here.

10 Thank you, Your Honor.

11 THE COURT: Thank you.

12 MR. KESSEL: And another issue -- and, again, I
13 can't verify this, but apparently, the house -- the
14 Tascon house that's the subject of this criminal action
15 was also part of Mr. Tascon's estate. So I'm not quite
16 sure who would inherit what. I'm just trying to contest
17 and disconnect any connection of my client to the death
18 of Mr. Tascon.

19 THE COURT: Understood. Okay. The next
20 objection I understand is the enhancement for position
21 of trust. And I understood your argument to be that
22 Ms. Herrling didn't actually have any relationship
23 with -- for instance, Mr. Wilding, Mr. Tascon, and so
24 the position of trust enhancement cannot apply.

25 MR. KESSEL: That's right, and I state that in

1 my moving papers.

2 THE COURT: Okay. And then I did want to give
3 you an opportunity to respond to Note -- Application
4 Note 3 of 3B1.3, which addresses -- excuse me -- excuse
5 me -- addresses the issue of -- I'll just read it: This
6 adjustment also applies in a case in which the defendant
7 provides sufficient indicia to the victim that the
8 defendant legitimately holds a position of private or
9 public trust when, in fact, the defendant does not.

10 MR. KESSEL: I -- I heard that Application Note
11 and I've read that Application Note. I don't think
12 there's evidence to support that, Your Honor.

13 THE COURT: Okay. Because -- if you could
14 tease that out for the Court.

15 MR. KESSEL: That's indicating -- and I think
16 where I've seen that is, obviously, that adjustment is
17 for a breach of confidentiality or a breach of a
18 relationship that a defendant had with an actual person,
19 Your Honor. And I know of no facts that indicate that
20 Mr. -- Ms. Herrling was in any position to represent
21 anything to Mr. Herrling or Mr. Tascon where they relied
22 on her, where they, obviously, trusted her advice,
23 which, you know, a lot of fiduciary relationships, that
24 type of characteristics are very common and naturally
25 can be breached. I don't see that here.

1 THE COURT: Okay. And so your contention would
2 be even if the -- the actual enhancement doesn't
3 necessarily -- the actual enhancement doesn't
4 necessarily require a relationship between the defendant
5 and the victim, let me just read what the actual
6 enhancement reads -- give me just one moment. If the
7 defendant abused a position of public or private trust
8 or used a special skill in a manner that significantly
9 facilitated the commission or concealment of the offense
10 increased by two levels. So as the Court reads it, the
11 actual enhancement doesn't require a relationship
12 between the defendant and the victim. Although that
13 Application Note, I see what you're saying about that
14 particular Application Note, but your contention would
15 be, because she never represented herself to be -- to
16 Mr. Tascon or Mr. Wilding that this could not apply?

17 MR. KESSEL: Correct, Your Honor.

18 THE COURT: Okay. Understood.

19 Okay. Turning to the -- the loss amount, and
20 whether and how the Lowenstein estate should be
21 considered.

22 MR. KESSEL: Yes. Your Honor, I think I'm
23 quite aware of loss calculations under the guidelines,
24 and I'm speaking of actual losses out-of-pocket that can
25 be directly attributed to the defendant's conduct when

1 intended loss. Intended is, obviously, a lot more
2 ambiguous and a lot less to -- to define. In some
3 places, it's very easy. And, in fact, in some places,
4 the law in credit card fraud provides for a dollar
5 amount that the court should use. Here I'm -- I'm
6 indicating with respect to Lowenstein, I don't believe
7 there was any intended loss, because that property -- at
8 least, there is no evidence, was not ever indicating
9 going to the defendant unlike Tascon where there was a
10 sale and proceeds. That property was going through a
11 proper legal channel, albeit there's claims that the
12 Will of Ms. Lowenstein was changed, but as far as that
13 property, it was in the hands of the Court. It was in
14 the hands of a proper fiduciary to the Court that
15 ultimately sold that property for a greater value than
16 what it was worth.

17 THE COURT: Mr. Kessel, if I could just
18 interrupt you. So I understood your arguments that it
19 was never fraudulently sold. I thought the contention
20 was, because the intention was to fraudulently transfer
21 it to the defendant or other members of the conspiracy,
22 that's why the intended loss is the fair market value
23 when it was sold lawfully. So I wanted to give you a
24 chance to respond to that.

25 MR. KESSEL: Yes, and I would agree that the

1 intended loss could come about from the fact that the
2 defendant, and I think she's admitted her involvement
3 with the Lowenstein property, but I guess the dollar
4 amount that was used doesn't reflect, obviously, a
5 market value that indicates what would be sold at the
6 time the defendant was going to obtain the property,
7 Your Honor. And we know real estate values change at
8 any given time in the market and that's where it's hard,
9 and the guidelines speak to this, the Court has to,
10 obviously, look at objects like real estate that values
11 go up and down, although real estate has been strong for
12 many, many years and soft for the last year or so in
13 somebody's eyes. So my main concern was, one, using the
14 property at all, and it sounds like the Court is more
15 inclined to find that it is a consideration for an
16 intended loss. But, then, again, the Court has to look
17 at what the value is, because, obviously, the value
18 leads to the dollar amount, which then has a nexus to
19 the loss adjustments under the fraud section,
20 Your Honor.

21 THE COURT: Thank you. Why wouldn't I -- I
22 haven't made any decisions here -- why would I not
23 consider this property? Because of the fact that it was
24 never fraudulently sold?

25 MR. KESSEL: That was -- that was the Defense's

1 argument.

2 THE COURT: I see. I see. And then just so I
3 understand, the sale, the value argument that -- well,
4 we do have its fair market value at the time that it was
5 sold, but that's a different time from when the intended
6 loss was supposed to happen and so we don't know the
7 Delta. It may have been worth less at that time.

8 MR. KESSEL: Correct, Your Honor.

9 THE COURT: Okay. Thank you so much.

10 And then turning to -- and you can advise -- I
11 think that we now have -- I was going to talk about
12 something that I think we'll need to seal the courtroom
13 for, and I understand from the clerk that Ms. Williams
14 is back on.

15 MR. KESSEL: Okay.

16 THE COURT: So perhaps this is a good time to
17 hear from Ms. Williams and then we can close the
18 courtroom. So I'll have the clerk bring Ms. Williams.

19 THE COURTROOM DEPUTY: Ms. Williams, if you are
20 there, could you unmute your video and phone.

21 MS. WILLIAMS: Hello.

22 THE COURT: Hello. Can you hear me?

23 THE COURTROOM DEPUTY: Okay, there she is.

24 THE COURT: Ms. Williams?

25 THE WITNESS: [Inaudible.]

1 THE COURTROOM DEPUTY: We can't hear you yet.
2 It's not clear.

3 MS. WILLIAMS: Can you hear me?

4 THE COURTROOM DEPUTY: Okay, yes, we can hear
5 you now.

6 THE COURT: Okay. Okay.

7 THE COURTROOM DEPUTY: Should I swear her in,
8 Your Honor?

9 THE COURT: Let me inquire of the Government.
10 Should we place her under oath for her statement?

11 MR. BROWN: No, Your Honor. Because the
12 victim, who is allocuting --

13 THE COURT: Okay.

14 MR. BROWN: -- cross-examination, there's no
15 perjury, there's no nothing.

16 THE COURT: Okay. That's fine. Understood.

17 Okay, Ms. Williams, good afternoon. Can you
18 hear us?

19 MS. WILLIAMS: Hello.

20 THE COURT: Hello. Can you hear me?

21 MS. WILLIAMS: Okay. I can hear you now.

22 THE COURT: Okay. Wonderful. Good afternoon.

23 MS. WILLIAMS: Good afternoon.

24 THE COURT: Okay. And thank you for joining us
25 via Zoom. We are here for the sentencing hearing of

1 Caroline Joanne Herrling and the Government counsel,
2 Mr. Andrew Brown, has indicated that you wish to be
3 heard. So please -- please go ahead. If you can first
4 start by stating and spelling your name, that would be
5 appreciated.

6 MS. WILLIAMS: My name?

7 THE COURT: Yes.

8 MS. WILLIAMS: It is going in and out. State
9 and spell what?

10 THE COURT: Spell your name.

11 MS. WILLIAMS: My name is Miracle Markesha
12 Williams, M-I-R-A-C-L-E. M-A-R-K-E-S-H-A. Williams,
13 W-I-L-L-I-A-M-S.

14 THE COURT: Thank you.

15 Okay. Please go ahead. So, Ms. Williams, I
16 understood that you wanted to be heard in this
17 sentencing hearing regarding some information you think
18 the Court should consider in sentencing Ms. Herrling?

19 MS. WILLIAMS: Yes, ma'am.

20 THE COURT: Okay. So please go ahead. We're
21 all listening.

22 MS. WILLIAMS: It's going in and out.

23 THE COURT: Okay. Go ahead. We're listening.

24 MS. WILLIAMS: Okay. So I just wanted to let
25 y'all know like how this whole process like affected

1 Robert, Emmy, you know, Robert, he wasn't like just the
2 most like -- he was like mentally fragile, but like --
3 well, I want to start off with like how we loved each
4 other -- and this is Robert, because everybody -- I just
5 want to put a face with him first. This is Robert.
6 That's him.

7 THE COURT: Thank you.

8 MS. WILLIAMS: And he was my best friend.
9 Like, this whole stuff, the way I seen it like to take
10 somebody down like mentally and just like really affects
11 somebody and like, you know, him trying to help me and
12 all this going on and I, you know, it made me felt
13 helpless, because I don't know what to do, you know.
14 All I knew is when we came to Texas to hire, you know,
15 hire an attorney and stuff and, you know, he was going
16 through his mental stuff, and we kept on having to like
17 use more money to stay in this case so that we can find
18 out who stole his house. So -- because we were trying
19 to sell it so that we can, you know, start our lives
20 over out here in Texas. And once that happened, it was
21 like the cherry on top of the cupcake for the whole
22 situation like going back and forth. I think we were
23 going back and forth for like a year and a half maybe
24 until I found out it was sold. And it's just like I'm
25 having flashbacks -- I'm sorry.

1 THE COURT: I'm sorry. You said you were
2 having flashbacks? We didn't hear you.

3 THE WITNESS: He -- it just made him feel -- he
4 just felt helpless in the situation. The situation made
5 him feel helpless. It was mentally like who is -- not
6 knowing like why, but who -- like with your personal
7 information and stuff, do they know where we're at, you
8 know what I mean? Like it was just a whole bunch of
9 like paranoia. It was just a lot for him. It was just
10 so, so much. And then when it came to the day where --
11 when he passed away and everything, I was -- I was in
12 Wichita. I was at a birthday party, and I was -- I had
13 had a weird mood to that whole day. Like it was just --
14 I don't know. Like I was happy to be there, but I
15 really wasn't. Rob stayed at the house with the dogs,
16 because we had had a new litter and everything. He
17 wanted to make sure the pups, you know, got fed and
18 everything -- if they needed anything. My friend, she
19 walked in the room, because I was asleep mostly. And my
20 friend, she had walked in the room, because she had took
21 her nieces downstairs to go get them something to eat
22 and stuff. And when she came back in the room, she was
23 like, Miracle, wake up. I have to tell you something.
24 And you need to wake up right now. I was like, okay,
25 and she was like, she was like Robert, Robert killed

1 himself, and I jumped up and I was like what, I was
2 like, no, like, what do you mean? I was like, how? And
3 then so my dad was the one who found him. When I had --
4 I had came back like they had told me like, Miracle,
5 when you come back home, when you get back in town, like
6 don't go straight to the house. We don't want you to be
7 by yourself. We don't want you to stay --

8 THE COURT: Ms. Williams, I'm so sorry to
9 interrupt you. We're having a little bit of
10 difficulty -- we're having a little difficulty
11 understanding you when you -- when you're sort of far
12 from the phone. So if you could continue from -- you
13 indicated that your dad was the person who found
14 Mr. Tascon, and then we didn't hear anything after that.
15 Go ahead.

16 MS. WILLIAMS: Okay. And when I had came back
17 in town, you know, I spoke with Mr. Travis, I spoke to
18 my dad, and everything [inaudible] and they told me not
19 to come back to town. We don't want you to see that.
20 I'm --

21 THE COURT: I'm so sorry. Ms. Williams?

22 MS. WILLIAMS: -- until I get there and --

23 (Inaudible.)

24 THE COURT: Ms. Williams? Ms. Williams?

25 MS. WILLIAMS: Can you hear me?

1 THE COURT: It is going in and out.

2 MS. WILLIAMS: Can you hear me?

3 THE COURT: It is going in and out. I'm
4 wondering if -- yeah, if you can stay closer to the
5 phone. If you could start again. You indicated that --
6 not from the beginning, you spoke with your father and
7 with Mr. Travis.

8 MS. WILLIAMS: Yeah.

9 THE COURT: Okay. And then we sort of missed
10 what you said.

11 MS. WILLIAMS: You want me to start from there?

12 THE COURT: Yes, please.

13 MS. WILLIAMS: Okay. I spoke with my dad and
14 Mr. Travis, and they told me, you don't go to the house
15 by myself, to call someone. They didn't want me to be
16 there by myself. They didn't want me to stay by myself,
17 and so I said, okay. So when I had got back in town,
18 you know, I got home. I called my dad.

19 THE COURT: I'm sorry. Ms. Williams. I'm so
20 sorry to interrupt you. We are really struggling to
21 hear you. It keeps breaking up. I don't know if --

22 MS. WILLIAMS: It's [inaudible] --

23 THE COURT: I -- I do wonder if -- if we can
24 try something else besides the Zoom. Perhaps she could
25 just call into the Court's number. I don't know if you

1 have a lot more to say.

2 MS. WILLIAMS: [Inaudible.]

3 THE COURT: Okay. Yeah, we're not able to hear
4 you. So we will let Mr. Brown contact you to let you
5 know -- we'll have to hear from you a little bit later
6 in the hearing.

7 MS. WILLIAMS: Okay.

8 THE COURT: Okay. Thank you. And I apologize
9 for that whole thing. Okay. So, Mr. Brown --

10 MS. WILLIAMS: Can you hear me?

11 THE COURT: Okay. So we're going to end the
12 Zoom right now. And, then, Mr. Brown, at some point a
13 little bit later, we'll -- we'll take a recess to figure
14 out if she can get a better Zoom or if she can call in.
15 I feel badly for continuing to interrupt Mr. Kessel's
16 presentation. So we won't do that again. And we'll
17 just have to hear from her at a later time. I
18 understand that she wanted to be heard first. But the
19 technology is not cooperating.

20 Okay. So, Mr. Kessel, if you wouldn't mind, we
21 will return to you. We had just addressed the issue of
22 the Lowenstein estate, and then I indicated that I was
23 going to go into an issue that I think involves some of
24 the sealed material. So I'm going to ask the courtroom
25 clerk at this time to make sure that the Zoom is closed

1 and to seal the courtroom. And I will advise the court
2 reporter that this portion of the transcript should be
3 sealed for the reasons stated earlier.

4 (Sealed proceeding filed separately.)

5 (Whereupon, the record is unsealed.)

6 MR. BROWN: Yes, Your Honor. So, first,
7 there's nothing in 4C1.1 that says, Your Honor, can
8 simply ignore a criminal history point. The actual
9 quote is, the defendant did not receive any criminal
10 history points from Chapter four, part A. It doesn't
11 say that the Court felt were meritorious or relatively
12 recent or anything. It's --

13 THE COURT: And let me just interrupt you. I
14 guess what I thought Mr. Kessel was referring to was --
15 and you'll have to help me with this: That in -- did
16 the Court have some discretion with respect to criminal
17 history --

18 MR. BROWN: Yes.

19 THE COURT: -- in determining that some of what
20 Probation has included under criminal history should not
21 be included?

22 MR. BROWN: Not in terms of 4C1.1.

23 THE COURT: And so that's -- I understand that
24 that's the distinction that you're making.

25 MR. BROWN: Yes.

1 THE COURT: But that the idea that Court has
2 the discretion for purposes of criminal history --

3 MR. BROWN: Correct.

4 THE COURT: -- is true? But you're saying that
5 that doesn't say anything about the Zero-Point Offender?

6 MR. BROWN: Correct.

7 THE COURT: Got it.

8 MR. BROWN: Okay. You could always give
9 somebody a downward departure or downward variance, you
10 could move them from criminal history Category 1 to 3.
11 That's all within your discretion, but it doesn't say
12 here that the criminal history they end up with is in a
13 particular one or the Court believes that it's correctly
14 indicative of the defendant's criminality. It just
15 says, did they receive a criminal history point.

16 THE COURT: Okay. Thank you.

17 MR. BROWN: Sure.

18 THE COURT: I don't think I need anything
19 further on that. I also don't think I need anything
20 further on the position of trust. I understand the
21 Government's arguments and I am inclined to adopt them.
22 I don't think I need to hear anything further on the
23 Lowenstein Estate as I -- I understand that the
24 defendant's arguments about the sale -- that the Court
25 should not treat the final sale value as the fair market

1 value and because it was not officially fraudulently
2 sold, it shouldn't be treated as intended loss. And I'm
3 inclined to agree with the Government's position on
4 that. I did want to give you the opportunity to respond
5 with respect to the ten victims. And you heard Defense
6 counsel's responses with respect to the different
7 categories that the Government had identified. And so I
8 just wanted the record to be clear about what your
9 response is, starting, I guess, with victim number 5.

10 MR. BROWN: Yeah, so, Your Honor, the big
11 problem with the number of victims as far as the Defense
12 is concerned, is he has ignored what the guidelines
13 actually say. It is true that in many cases, the term
14 victim includes any person who has sustained any part of
15 the actual loss; however, 2B1.1, Application Note 1,
16 says --

17 THE COURT: Give me just a moment, Counsel.

18 MR. BROWN: And, actually, I misspoke. It's
19 2B1.1 Application Note 4E as in Edward.

20 The COURT: Sorry. You said 2B?

21 MR. BROWN: 1.1, Application Note 4, E as in
22 Edward. And I can read it for Your Honor, if that would
23 be helpful.

24 THE COURT: No, it's probably easier for me to
25 read it to myself. Give me just a moment.

1 Okay. So that victim includes any individual
2 whose means of identification was used unlawfully or
3 without authority?

4 MR. BROWN: Right.

5 THE COURT: And as you would indicate, without
6 regard to whether they experienced any loss?

7 MR. BROWN: Exactly, Your Honor.

8 THE COURT: Okay. Go ahead. And then with
9 respects to 9 through 13?

10 MR. BROWN: Yes, Your Honor. So moving back to
11 page eight of the Pacer or page three of the
12 Government's brief, Document 47, it quotes
13 *United States v. Santarelli* in which the defendant had
14 argued that the only victim was the decedent's estate.
15 And the Third Circuit affirmed the District Court's
16 counting as victims all the beneficiaries in the Will,
17 because they received nothing due to the fraud and they
18 numbered more than 10. So for the victims numbered 5
19 through 8, they get counted, because their identities
20 were misused and, actually, that's also true of victim
21 17, whose name was put on the forged will. And then
22 Miracle Williams, Lawrence Eckert, Pamela Sockel,
23 Susan Smith, and Christine Nealy were all beneficiaries
24 of wills, who did not get their inheritance because of
25 the defendant's fraud.

1 THE COURT: And what's your response to
2 Mr. Kessel's argument that they're -- they're not
3 definitive takers and there are some disputes regarding
4 those Wills?

5 MR. BROWN: That actually troubled me,
6 Your Honor. What he literally said was, I don't know.
7 I don't know if they're going to get it. I don't know
8 if these people are the real takers. But that's not the
9 question, Your Honor. It's not up to Mr. Kessel's
10 satisfaction in that he can simply play ostrich and
11 ignore the evidence. The way that it works is the
12 presentence report submits information. The parties --

13 THE COURT: And I'm just going to stop you
14 right there just for the sake of efficiency. So my
15 understanding is that with respect to these individuals,
16 9 through 13, you're relying on the -- the Meza
17 declaration and these other exhibits. Mr. Kessel is
18 indicating that he has knowledge that these
19 individuals -- that these various Wills are contested.
20 As I understand it, he has not put evidence in the
21 record of that. And so I think your conclusion is then
22 he's -- he's not -- the Government has shown by a
23 preponderance of the evidence that these are heirs;
24 correct?

25 MR. BROWN: It's not even that he says that

1 it's contested. He just said he didn't know.

2 THE COURT: Well, I think he did say that he is
3 aware. But I think that is neither here nor there.

4 MR. BROWN: So if he wanted to go out and look
5 and see, that's the way the sentencing process is
6 supposed to work, and then he can come back with some
7 exhibit explaining how they had been disinherited or
8 whatever it was, and then Your Honor could resolve it.
9 But what cannot happen --

10 THE COURT: And just, again, for the sake of
11 efficiency, I understand your point. Turning to 14
12 through 16, the companies.

13 MR. BROWN: Yeah, so, Your Honor, charges have
14 been put onto Mr. Wilding's credit cards. I think
15 Mr. Kessel talked about how he thought these were
16 lenders for a home and that they were going to get more
17 money back than was owed so it would all be fine.
18 That's not the case. The case is when they looted
19 Mr. Wilding's home, they got his credit cards and they
20 kept using them. And they charged up a storm and, of
21 course, nobody ever paid that. And so Wells Fargo Bank
22 and Citibank are out-of-pocket from the credit card
23 fraud that the conspiracy caused and then, similarly,
24 Fidelity National Title Insurance Company submitted a
25 report, which is attached as an exhibit, indicating that

1 they are out-of-pocket over \$613,000 for the lawsuit
2 over the Robert Tascon property. So just in the
3 Government's pleading, there are 17 victims, which fully
4 warrants the Plus Two, but even if it didn't, even if
5 everything I said was wrong, it would still apply,
6 because there is also a Plus Two if you cause
7 substantial financial harm to any individual. And, you
8 know, perhaps you'd say, well, you didn't cause harm to
9 Mr. Wilding, if we assume that he was dead before the
10 fraud began. But you can't say that for Robert Tascon.
11 He had one property, and he lost it. His whole house.
12 That was his only asset that he could control. It's
13 certainly true that he got a monthly stipend so that he
14 was not going to be out on the street or hungry without
15 that house. But that was the only money he had to start
16 over, which is one of the reasons he was so upset when
17 he lost it. So that enhancement applies both, because
18 there are well over 10 victims, and because the
19 defendant caused substantial financial harm to
20 Mr. Tascon.

21 THE COURT: Thank you. Okay. With respect to
22 the leader or organizer, and you can let me know if you
23 think that the courtroom needs to be closed to discuss
24 this -- Mr. Kessel made the argument regarding the idea
25 that Ms. Herrling was actually an equal participant with

1 Mr. Kroth.

2 MR. KESSEL: It was Mr. Kantor.

3 THE COURT: Kantor. Thank you. And in the
4 Court's view, that, I guess, is neither here nor there.
5 If there were overall five people, which the Government
6 has pointed to Wilkins, Salinas, and Shtolzberg, and so
7 I wanted -- if there was anything that you wanted to add
8 or clarify with respect to the Government's position on
9 that, if we put to one side whether she was equal
10 participants with Kroth and Kantor, if these other
11 individuals were led by the organizers, would this
12 enhancement still apply?

13 MR. BROWN: It absolutely would, Your Honor.
14 And at ECF Document 47, page 21, it quotes, the
15 defendant explaining to Mr. Kroth how she doesn't find
16 him reliable. He doesn't get things done. And so she's
17 going to use her own team, Hadley, James, Randy, and
18 Jonathan. Right there, she's listing four persons with,
19 with herself, that's five participants. That, by
20 itself, would do it. But, Your Honor, I don't want to
21 let slide the Defense's comment or claim rather that
22 Kroth and Kantor are equal to Ms. Herrling. They
23 certainly are not. When the deal was struck initially,
24 they did agree on an even split, one-third each. And
25 Mr. Kroth found the body. That was his contribution.

1 Mr. Kantor had experience with trusts and Wills, and his
2 providing that expertise was his contribution. And the
3 defendant is very intelligence, very organized, very
4 poised, and she was going to be the face of the
5 organization. She was going to deal with the courts and
6 the attorneys. She was going to deal with probate. And
7 she was going to administer the thing. But, Your Honor,
8 it didn't turn out that way. And, it's quite clear even
9 from what the defendants themselves said that she became
10 the leader. As Your Honor noted, one of the main
11 indications that somebody is a leader is that they get a
12 larger share of the proceeds. Well, Mr. Kantor was
13 certainly upset. He got, according to Mr. Versoza's
14 money laundering tracing, \$64,000, and we think, based
15 on some other evidence, it might have been a few
16 thousand dollars more than that. It just wasn't in the
17 bank records. So he was very upset, and that is the
18 context in which he is puffing about his great
19 contributions and why he should be given more money.
20 But even he -- and this is ECF 47 at Pacer page 18,
21 brief page 13, he says, you're saying that we don't
22 deserve our compensation. Not only are you being a bad
23 leader and a bad partner, and then he berates her and
24 tries to get things made. So he acknowledges in his own
25 words that she's the leader, and she gets the money.

1 She uses it to buy a house. Mr. Kantor doesn't get
2 anything like that. And, similarly, Mr. Kroth had a
3 similar interaction with her where he felt he was being
4 cut out much like the quote that I previously offered
5 where she explained how he wasn't getting things done
6 and she was going to use her own team. And he said,
7 your role has gotten bigger and bigger and all this and
8 you're taking on more and more of a role and
9 responsibility and stepped up to the plate. And to be
10 honest with you, I am amazed at you, but then he goes on
11 to say, but don't forget, I was the one who found the
12 body so give me my third. But, again, the very
13 people the defendant is claiming were her equals, in
14 their own words say that she is running the show and
15 they are begging her for money and they understand
16 whether they receive it or not, it's in her discretion.
17 So, certainly, Your Honor could impose the plus four for
18 leader and role without determining whether or not she
19 was at the same level or higher than Kroth and Kantor,
20 but she definitely was at a higher role. She was the
21 leader and organizer. And she well-deserves more than
22 plus four, because there were far more than five
23 participants in this conspiracy.

24 THE COURT: Understood.

25 Turning to the obstruction of justice, and I

1 want to be careful in case we need to go into the sealed
2 portion, am I correct that one of the basis that
3 Government asserts for an obstruction of justice
4 enhancement is the actual disposal of the body?

5 MR. BROWN: Absolutely.

6 THE COURT: Okay. I don't think, and I
7 understand Mr. Kessel has explained why there's no
8 independent evidence of that. I don't think in the open
9 proceeding, we need to go into that further. I don't
10 see that there is -- that is a consideration of the
11 Court. If the Court finds that it happened by a
12 preponderance of the evidence, and the Court finds that
13 that constitutes obstruction, then this enhancement can
14 apply.

15 And then with respect to the acceptance of
16 responsibility, I heard Mr. Kessel is saying that it's
17 very unusual to deny acceptance of responsibility and,
18 typically, it only happens when the defendant has
19 undermined the factual basis and maybe recanted or --
20 or, you know, at the sentencing, indicated I didn't
21 really do what I said I did. I understand the
22 Government's argument to be here, that's not the
23 situation, but the situation is that Ms. Herrling has
24 engaged in conduct inconsistent with the acceptance of
25 responsibility. Part of that is sealed material.

1 But -- but part of that is -- is -- is, for instance,
2 the -- the attempts regarding the -- the house and the
3 forfeiture.

4 MR. BROWN: That's right, Your Honor. And
5 there are other things that are in the open record, too.

6 THE COURT: Okay.

7 MR. BROWN: Not only did she ask her mother to
8 take the house explicitly so that it wouldn't be sealed,
9 but she also calls --

10 THE COURT: And where -- I'm sorry. If you can
11 just point the Court to -- that is in -- which
12 declaration is that in?

13 So in ECF 47, there's reference made to the
14 PSR, paragraph 97. But I wasn't sure --

15 MR. BROWN: I did find it, Your Honor.

16 THE COURT: Oh, great.

17 MR. BROWN: It's ECF Document 62, Pacer page
18 two, brief page two. And the defendant says to her
19 mother: Okay, got a couple of things for you guys, can
20 I -- can I give you guys my house? That's the first
21 one.

22 Defendant's mother: And then they'll throw us
23 in jail, too.

24 Defendant: No, no, they won't. Nope. Not at
25 all. Can I give you my house so it doesn't get seized?

1 And then on top of that, Your Honor, there is
2 another call where she -- and this is from the PSR,
3 where she calls her then boyfriend, a Samuel Shtolzberg,
4 and asks him to falsely tell the Government that the
5 identity -- the counterfeit identity document of
6 Robert Tascon came from Kroth when it did not. So in
7 open documents that are not sealed, she has twice, from
8 prison, tried to obstruct justice just in those two.
9 And that's not -- and, I mean, there are many, many,
10 many more examples that we're not going to discuss with
11 the courtroom open. But I really -- well, I've said
12 enough.

13 THE COURT: Yeah, okay. Thank you. Okay.
14 That's all I had in terms of my questions. I don't know
15 if you needed to address anything further with respect
16 to the death of Mr. Tascon with the evidence that's in
17 the record and the statement of Ms. Williams. I -- I do
18 think that there's enough to find that the -- that the
19 death was a suicide and that it was caused at least in
20 part by the loss of this home. I don't think anyone
21 disputes that Mr. Tascon, as his wife indicated, was
22 mentally fragile, but I don't understand that to be --
23 the fact that he was mentally fragile doesn't mean that
24 this didn't cause the suicide.

25 Okay. So that's all I have in terms of my

1 questions. Anything else that you want to share with
2 the Court and then at that point, we'll take our break.
3 We'll see if the, if the clerk can get the --
4 Ms. Williams back and I can briefly hear from her as
5 well if she had anything further.

6 MR. BROWN: Thank you, Your Honor.

7 I wanted to address the defendant's lack of
8 criminal history, which I see as could be seen as the
9 most mitigating factor, but I don't think it is in this
10 case. The Defense argues that she should be shown
11 leniency, because she has almost no criminal history and
12 has not yet had drug treatment. And while she doesn't
13 have many convictions, only the one, that's not the same
14 as not having been involved in crime in the past. She
15 has acknowledged that she has been a daily
16 methamphetamine user for the last 18 years, smoking it,
17 eight to nine times per day. And she wants this Court
18 to believe that during those 18 years, she was a high
19 performing and otherwise honest entrepreneur, who ran a
20 business from her home that provided litigation
21 consulting, notwithstanding that she only has a high
22 school degree, and by her own admission, has only had
23 about 77 days of sobriety as an adult.

24 She told Probation that she earned \$150,000 per
25 year legitimately as a litigation consultant from 2014

1 to 2022, the nine years before her arrest.

2 In paragraph 149 of the PSR, they report that
3 Herrling says, she was the owner of her own litigation
4 consulting firm, Nexus Consulting, she reported earning
5 \$150,000 a year. And then they checked the California
6 Secretary of State website and saw that her business was
7 inactive, and that another business with the same name
8 was, again, opened, but this owner was Caroline Phoenix,
9 which is her AKA and the alias she used when committing
10 the Robert Tascon fraud. Now, if she had really been a
11 high performing business person during that period, it
12 would definitely be mitigating, because it would tend to
13 show that she could return to working honestly and
14 paying taxes like the rest of us. But the evidence is
15 to the contrary, you know. Putting aside that her
16 business is inactive, we subpoenaed her tax records from
17 2015 through 2022, and this is at the complaint
18 affidavit, at paragraph 77. She did not file tax
19 returns at all from 2016 to 2022, despite her claim that
20 she earned \$155,000 per year then. She did file a tax
21 return for 2015, but it showed that she had a business
22 loss, not the \$150,000 that she claims she made.

23 And, of course, we may infer that her Nexus
24 Consulting was fraudulent by the fact that she put it
25 under the name Caroline Phoenix. In fact, Caroline

1 Phoenix received a cease and desist letter from the
2 California State Bar for the unauthorized practice of
3 law. That's at the complaint affidavit, paragraph 76.
4 So how has she been paying for her living expenses and
5 her drug addiction this whole time? She does not have
6 any verifiable employment. The only evidence of income
7 in the record is from her scams, Nexus Consulting,
8 scammed consumers out of money while the defendant acted
9 as an attorney, which she clearly was not. And, of
10 course, the evidence from this case shows that she has
11 made a great deal of money from identity theft. So
12 while she has almost no convictions, she has supported
13 herself and her addiction for 26 years and there is no
14 evidence that she had legitimate income during that
15 time.

16 One of the most aggravating parts about her
17 history is how incorrigible she is. A normal person in
18 her situation would be scared from all the police
19 contact she had and would drop crime and go straight.
20 The defendant has a long record of every time she is
21 caught or close to being caught, she responds with lies,
22 obstruction of justice, and more fraud. Even after the
23 state bar issued a cease and desist letter against her
24 for the unauthorized practice of law, she continued to
25 practice law. And that's at complaint affidavit,

1 paragraph 64, 76, and 106. And when she was being
2 investigated by LAPD homicide, regarding the
3 disappearance of Charles Wilding, she stole and sold
4 Robert Tascon's property. I mean, how brazen is that?
5 And this, of course, led to his demise. And even while
6 she was being sued over the fraudulent sale of Robert
7 Tascon's property, she still hunted for more victims --
8 and that's at complaint affidavit, paragraph 101, where
9 she has the heirs index on her computer and has searches
10 for millionaire in obituary and lists promising victims.
11 Her extraordinary brazen and reckless crimes while under
12 investigation and cease and desist warnings, shows she
13 is incapable of conforming her actions to the law. I
14 thought at first, well, this must be the
15 methamphetamine. She feels invincible. But I was
16 wrong. Even after she was arrested and jailed and no
17 longer had access to methamphetamine, and she was being
18 advised by an attorney, and was pending sentencing
19 before this Court, she still turned to more scams. She
20 tried to put her house in her parents' names so it could
21 not be seized, and she tried to get her boyfriend to lie
22 to the investigators about a source of the Robert Tascon
23 ID pinning it falsely on Jason Kroth. She does not
24 stop. Her answer to everything is more fraud and more
25 lies.

1 The defendant has also written in her papers
2 that she should get leniency, because she has -- she has
3 a drug problem, which the Government completely agrees
4 with. And never had the benefit of treatment.

5 While she had 26 years to get treatment,
6 Narcotics Anonymous has 500 groups in
7 Southern California that host over a thousand meetings
8 per month. No one prevented her from joining them. She
9 chose not to even though the drugs were destroying her
10 health as the Court knows from the illnesses she now
11 reports, which are associated with methamphetamine
12 abuse.

13 Well, when the agents executed a search warrant
14 at her residence, they interviewed her about the drugs
15 and she said that she quote, "did not need drug
16 rehabilitation." That was complaint affidavit at 91.
17 And the irony, Your Honor, is this defendant who is
18 asking for leniency, because she had a drug problem and
19 needs drug treatment, runs a sober living facility where
20 she keeps a homemade silencer, assault rifles, ghost
21 guns, meth, heroin, and everything else.

22 One other point that I did not make in my
23 paper, Your Honor, is about the advantages this
24 defendant has had. I'm sure Your Honor has seen many
25 defendants who come from broken homes and poverty and

1 they reasonably argue that they never really had a
2 chance, because they grew up in high-crime areas where
3 they were pushed into criminality. But the defendant,
4 by her own admission, says that she had the best
5 childhood that anyone could ask for. She was the last
6 of her parents' children. Her siblings went off to
7 college when she was in kindergarten, her family was
8 financially secure. She was the apple of her parents'
9 eyes and got love and support and stability from them.
10 She excelled at school. She is really smart and
11 organized. But for whatever reason, she's chosen to use
12 that to pursue crimes like a professional.

13 You know, it gets back again to how Mr. Kroth,
14 who she was pushing out, because she found him
15 unreliable, talked about how amazed he was at her
16 abilities and how she was performing so highly. And I
17 think he's right. She's amazing at professionalizing
18 stealing estates, tracking unkept houses, using
19 subordinates to search for potential victims who are
20 unlikely to be able to defend their property, and she
21 has the intelligence and leadership to run a crew. And
22 the poise to work with attorneys and courts to take over
23 estates.

24 Your Honor, I'm going to skip over Robert
25 Tascon based on your comments, and I'll just briefly

1 touch on Mr. Wilding.

2 Obviously, Your Honor has already indicated
3 that she obstructed justice by disposing of the body.
4 First trying to dissolve it in lye, and then hacking it
5 up and dumping it in the ocean. But she also directed
6 others to rip out the floor boards and -- of the house
7 so that there would be no evidence of where he died.
8 And this has prevented us from determining his manner of
9 death. But what does it say about her character that
10 she attempted to dissolve him in lye, and then
11 desecrated his body with an axe? Hardened criminals in
12 the organization flinched in taking part of that.

13 Mr. Kroth, who has 15 felony convictions,
14 wouldn't do it. And then when she goes to the Bay area
15 to dump it in the ocean, she goes up on a muscle car and
16 turns it into a mini vacation, taking selfies on the
17 boat with her smiling and then flying back on a private
18 jet that she could afford with the fraud proceeds.

19 I think that really says it all about her
20 character.

21 Thank you, Your Honor.

22 THE COURT: Thank you.

23 And just so that the record is clear, besides
24 Ms. Williams, there were no other victims that wanted to
25 be heard; correct?

1 MR. BROWN: That's right, Your Honor.

2 THE COURT: Okay. And I don't know that I need
3 to hear from Ms. Williams before I rule on the contested
4 issues concerning the guidelines range. So I will go
5 ahead and do that unless Government has an objection.
6 And then while I take the recess, we can see if -- if we
7 can still get her back.

8 MR. BROWN: No objection, Your Honor.

9 THE COURT: Okay. Thank you.

10 Okay. So as I listed in the beginning, there
11 were a number of disputes raised concerning the
12 guidelines range calculation, and just so that the
13 record is clear, I do want to advise the parties of the
14 Court's rulings on these -- on these matters. And I do
15 find that the standard of proof under these
16 circumstances is clear and convincing -- excuse me,
17 preponderance of the evidence for the reasons I stated
18 at the outset, and I find that the evidence that the
19 Government has pointed to, namely, the complaint
20 affidavit, the Versoza declaration, the statements of
21 Ms. Herrling herself, and the recording that
22 Ms. Herrling attached to her documents as well as the
23 other hearsay statements are admissible, because they
24 all have the indicia of reliability.

25 With respect to the Zero-Point Offender, I find

1 Ms. Herrling does not -- is not a Zero-Point Offender
2 and does not qualify. She does have a criminal history
3 point even if the Court could put aside her criminal
4 history point, the Court is not inclined to and declines
5 to do so.

6 With respect to the position of the trust, the
7 Court finds that reading the guideline together with the
8 Application Note, what Ms. Herrling did, which is
9 undisputed, which is to present herself as an attorney,
10 as somebody with the power of an attorney, and other
11 things of that nature, even if she didn't present
12 herself to, for instance, Tascon and Wilding, does fit
13 within the definition for the position of trust
14 enhancement. So I find that that does apply.

15 With respect to the Lowenstein Estate, for the
16 reasons I alluded to earlier, it was her intention to
17 unlawfully transfer this, so the estate counts, and the
18 Court finds that the fair market value at the time of
19 the sale, given the period of time between when the
20 intended transfer happened and when the sale was, that's
21 a fair measure of the market value. It's true that real
22 estate does fluctuate, but the Court doesn't see
23 anything in the record to suggest that it fluctuated so
24 much that the fair market value at sale is not an
25 appropriate measure of the intended loss, which is --

1 the guidelines indicate that much deference is given to
2 the sentencing judge on that determination.

3 With respect to the number of victims: The
4 Court has considered the arguments of counsel with
5 respect to the number of victims, and for the reasons
6 stated -- primarily the reasons stated by Mr. Brown in
7 his rebuttal today, the Court finds that there is
8 support for over ten victims. The companies are indeed
9 victims for the reasons Mr. Brown stated. There is
10 evidence in the record to support victims 9 through 13.
11 And there isn't any contradictory evidence besides the
12 arguments of counsel and no loss is needed for the 5
13 through 8 and 17, because their identities were used.
14 The Court also does find under the circumstances that
15 substantial financial harm was caused to Mr. Tascon so
16 that's an independent reason for that particular
17 enhancement.

18 With respect to the leader/organizer, the Court
19 finds that there were at least five participants and
20 that Ms. Herrling was an organizer or leader. The Court
21 is inclined to find that she was the organizer and
22 leader, but even if the Court was not, even if she was
23 equal to Kantor and Kroth, that the enhancement, which
24 would still apply, and the Court relies heavily on the
25 exhibit sheet put into the record as well as other

1 statements that were not in the nature of co-conspirator
2 statements that the Court would normally be skeptical
3 of, because they were in like conversations amongst the
4 co-conspirators.

5 With respect to the obstruction of justice, the
6 Government has pointed to a number of possibilities with
7 respect to obstruction of justice. The Court does find
8 the following to be supported by the evidence in the
9 record and to be -- to constitute obstruction of
10 justice, the -- the disposal of the body, the asking her
11 parents to take her home so that it would not be seized,
12 and then trying to get her boyfriend to lie about where
13 the identity information for Mr. Wilding came from.

14 And then, finally, with respect to acceptance
15 of responsibility, the Court can consider conduct that
16 is inconsistent with the acceptance of responsibility.
17 And in particular, the Court can consider that -- the
18 Application Note Four indicates that the conduct
19 resulting in the obstruction enhancement ordinarily
20 indicates that the defendant has not accepted
21 responsibility, and so the Court finds that that -- that
22 would be appropriate here and, in addition to that, so
23 in addition to the obstruction, the other conduct that
24 the Court noted, which is inconsistent with the
25 acceptance of responsibility, such as trying to get

1 another witness to lie and trying to avoid the
2 forfeiture that was agreed to in the plea agreement.
3 I've already indicated that I do believe that the
4 evidence in the record demonstrates to this Court by a
5 preponderance of the evidence that the death of
6 Mr. Tascon did result in part from the conduct of
7 Mr. Herrling and her co-conspirators, in that it was a
8 suicide, and I think I've already addressed the evidence
9 that's in the record on that. So I think I've addressed
10 all of the -- do you need a moment?

11 So for that reason, I do find the report to be
12 accurate and correct. I'll adopt the report and its
13 calculation of the Advisory Sentencing Guidelines. I
14 will just note to the extent that my comments today
15 depart from the presentence report. It's my comments
16 today that would govern. The Advisory Guidelines are
17 the starting point and the initial bench mark in the
18 Court's analysis. I'm taking into account the
19 November 1st, 2023 edition of the guidelines. I'm
20 consulting and taking that into account. The total
21 offense level is therefore 39. The criminal history
22 category is one and the guidelines range for custody is
23 240 months for the reasons stated by Probation in the --
24 I think it was in the presentence report or perhaps in
25 their recommendation. The actual guidelines range would

1 be 262 to 327, but this crime has a statutory maximum of
2 240. And so for that reason, that's what counts as the
3 guidelines range.

4 The guideline range for supervised release is
5 one to three years. The fine guidelines range is 50,000
6 to 250,000, and the special assessment to the crime
7 victim's fund is \$100.

8 I'm making an individualized determination
9 based upon the facts. I'm also considering the factors
10 described in 18 U.S.C. Section 3553, Subdivision A,
11 especially, but not exclusively, the nature and
12 circumstances of the offense and history and
13 characteristics of the defendant, the need for the
14 sentence to reflect the seriousness of the offense, to
15 promote respect for the law, and provide just
16 punishment, for an adequate deterrence for criminal
17 conduct, protect the public from further crimes of the
18 defendant, and provide the defendant with needed
19 educational or vocational training, medical care, or
20 other correctional treatment in the most effective
21 manner, the kinds of sentences available, the kinds of
22 sentence and sentencing range established for the
23 applicable category of offense committed by the
24 applicable category of defendant as set forth in the
25 guidelines subject to amendments, any pertinent policy

1 statements issued by the sentencing commission, subject
2 to amendments, the need to avoid unwarranted sentence
3 disparities amongst defendants with similar records who
4 have been convicted of similar offenses, and the need to
5 provide restitution to victims of the offense.

6 Do the parties wish to be heard further with
7 respect to the sentence they believe is appropriate?
8 Mr. Kessel?

9 MR. KESSEL: No, Your Honor.

10 THE COURT: Mr. Brown.

11 MR. BROWN: No, Your Honor.

12 THE COURT: Mr. Kessel, does the defendant
13 waive reading of General Order 20-04?

14 MR. KESSEL: Yes, Your Honor.

15 THE COURT: Okay. Okay. We will take a
16 15-minute recess at this time. I will ask the clerk if
17 she is able to work with Mr. Brown to get Ms. Williams
18 back and when I return, I will either announce the
19 sentence or hear from Ms. Williams first. Court's in
20 recess.

21 (Recess.)

22 THE COURT: Can I see the parties at sidebar on
23 the record, and the sidebar will be sealed.

24 (Sealed Sidebar.)

25 (Whereupon, the record is unsealed.)

1 THE COURT: And I understand we have
2 Ms. Williams on the phone. Ms. Williams, can you hear
3 us?

4 MS. WILLIAMS: Yes, I can hear you.

5 THE COURT: Okay. Thank you. And we can hear
6 you. And thank you for being willing to come back and
7 it looks like we're now able to hear you clearly. I
8 understand from my colleague, the courtroom deputy
9 clerk, that you first wanted your father to be heard.

10 THE WITNESS: Yes, ma'am. He is also on
11 three-way. I am sorry he has to connect that way.
12 We're on a three-way as well. My father is Arthur
13 Maurice Williams, who was actually the one who found
14 Robert when he passed away.

15 THE COURT: Okay. And, Ms. Williams, and thank
16 you, Mr. Williams, for being willing to participate. In
17 a sentencing hearing, there are certain rules concerning
18 who can speak at a sentencing hearing. And I'm limited
19 by those rules. So I do acknowledge how devastating it
20 must have been for Mr. Williams to discover his
21 son-in-law in this manner and so I don't want to take
22 away from that, but I have to let you know that,
23 unfortunately, I cannot hear from Mr. Williams in this
24 hearing, because of the rules that apply. I hope you
25 understand that.

1 THE WITNESS: Okay, yes, ma'am. Well, I'll
2 only have my dad speak through me.

3 THE COURT: Okay. And so I just want to hear
4 from you as a victim of the crimes that we're here for
5 sentencing on, and we did hear much of what you said
6 earlier and you explained how much stress was caused and
7 you explained the nature of your relationship with
8 Mr. Tascon, and the plans that the two of you had for
9 starting afresh, and you explained to us how he was
10 mentally fragile and -- and how much pain he went
11 through once he realized that he had lost his -- his
12 house and -- and you also explained to us quite
13 compellingly how he felt in terms of the paranoia and
14 the other stresses not knowing who had taken his
15 identity and what they were doing with it.

16 THE WITNESS: Yes, ma'am.

17 THE COURT: And I think where we started to
18 break up --

19 MS. WILLIAMS: Continuing off from that, I left
20 off -- I want to continue off from that by saying that
21 [inaudible] and also who was doing this? You know what
22 I mean, because we didn't know who -- we knew that, you
23 know, I'm not going to -- okay, vender off from the
24 whole situation, but we thank you all for actually
25 finding who was responsible, for being behind -- being

1 the number one person, okay. And I want this to be
2 understood that Robert, his dad was the one who designed
3 in part that, okay. And his mother was a renowned
4 heart -- was a renowned artist out of Canada. He was an
5 only child, no kids or anything. You know, his dad, you
6 know -- his dad wanted him to be like a lawyer or a
7 doctor or something. [Inaudible] his plans designed and
8 stuff like that. [Inaudible] -- and, you know, what I
9 mean -- so it was always like, you know, he told me his
10 whole life, it was a back and forth [inaudible] --

11 THE COURT: I'm sorry. Ms. Williams.
12 Ms. Williams. Ms. Williams. Ms. Williams.
13 Ms. Williams, can you hear us?

14 THE COURT DEPUTY: Ms. Williams. Ms. Williams.
15 Ms. Williams. Hello. Can you hear the Court? The
16 Court is trying to speak to you. Okay. Stop speaking
17 for a minute, please.

18 THE COURT: Can you hear us?

19 THE WITNESS: Yeah.

20 THE COURT: Okay. We weren't able to hear what
21 you were saying and then I think you couldn't hear me
22 when I was trying to interrupt. You explained to his
23 parents, where you explained that he liked plans and
24 designs and then please proceed.

25 THE WITNESS: What was the last part?

1 THE COURT: Designs.

2 THE WITNESS: Yes, Robert's passing.

3 THE COURT: And you said -- you said his
4 parents wanted him to be a doctor or a lawyer and he
5 liked plans and designs, I thought you said.

6 THE WITNESS: Yeah, like landscaping -- like
7 landscaping and designs.

8 THE COURT: Yes.

9 MS. WILLIAMS: So his father and [inaudible] --

10 THE COURT: I'm sorry. You said the father --
11 you said "father."

12 MS. WILLIAMS: Yes, when Caroline stole his
13 estate and everything -- [inaudible.]

14 THE COURT: Yes.

15 MS. WILLIAMS: -- we were -- we had to use
16 our -- he had to use those rentals [inaudible] that was
17 also used to pay our monthly expenses and handle our
18 business, but because she stole the house, we had to
19 remain in the quarter -- the Court processed thousands
20 and thousands of dollars. It was taken away from our
21 living expenses and everything, making the situation
22 more stressful, and not knowing who this was who was
23 after us, you know. And it was just a stressful matter
24 as a whole. And then once we found out that the house
25 was actually -- we were actually in the process of

1 selling the house. And then once we found out --
2 [inaudible] because they said was the
3 house [inaudible -- we said no, we both [inaudible] --

4 THE COURT: I'm so sorry. Ms. Williams,
5 Ms. Williams, Ms. Williams.

6 THE WITNESS: [Inaudible] whoever she was
7 involved with who owned [inaudible] -- she did whatever
8 she can do, but me and Robert had big plans. My dad, he
9 had retired and everything. Me and my Robert, once we
10 married and came to Texas, we told my dad, you can go
11 had ahead and retire. We built a family business
12 [inaudible] --

13 THE COURT: I'm going to ask her you to
14 interrupt her.

15 MS. WILLIAMS: My daddy [inaudible] --

16 THE DEPUTY CLERK: Ms. Williams, Ms. Williams,
17 hello, hello. Hello, hello, hello. Yes, stop for a
18 minute. The judge is trying to speak. You have to
19 listen, as well as when you speak. You have to listen,
20 okay. And you have to slow down. Okay. Hold on just
21 speak for a minute.

22 THE COURT: Okay. So, Ms. Williams,
23 unfortunately, I -- there -- we are -- this is the
24 difficulty with having somebody appear remotely. It's
25 so -- our technology does not really allow us to hear

1 you clearly. And then you're not able to hear me when
2 I'm interrupting you. And I really don't want us to go
3 too long without being able to record what you're
4 saying. And the court reporter and I are really
5 struggling to hear what you're saying. But if I may,
6 this is what I'm understanding from what you're saying.
7 You have explained to us the importance of Robert as a
8 person, to you, and to his family. And you have
9 explained how this theft of his property caused him so
10 much stress and caused you so much stress and pain. And
11 I think you've explained that very, very eloquently what
12 the effects of Ms. Herrling's crime was on you and was
13 on Robert. And I really appreciate you taking the time
14 and being patient with us and our technology in
15 explaining all of that. And I also understand from you
16 that you have explained that this caused so much
17 distress that it caused Robert to take his own life,
18 which, obviously, has caused you untold pain. Is that
19 an accurate summary?

20 MS. WILLIAMS: I also attempted to commit
21 suicide, as well after Robert committed suicide. So now
22 I don't -- I'm not even off of my medications, because I
23 was on pills. And I was on nightly medications and
24 sleep medications. When I committed -- when I attempted
25 to commit suicide after my husband did so I could

1 communicate with him and understand him and just
2 understand what kind of pain he was in and know that no
3 matter what, I had your back, and I'm sorry that we
4 couldn't find these people within your lifetime. When I
5 committed -- when I attempted, I'm not -- I'm not able
6 to be on my medications now, because now I have bad
7 anxiety and stuff, because now I'm not even comfortable
8 with having medications around me for my own purposes.
9 So this is still affecting me until this day.

10 THE COURT: Thank you. Thank you.

11 I really want to thank you for the time that
12 you spent with us. And I cannot imagine how difficult
13 it is for you to talk about these things. And the Court
14 greatly appreciates it. And I am very --

15 MS. WILLIAMS: Thank you. And I just want you
16 all to know that this lady had kind of talent to her.
17 You know what I mean? Like [inaudible] --

18 THE COURT: I didn't hear what you said. Just
19 a moment. I didn't hear what you said.

20 THE COURTROOM DEPUTY: Hello, hello, hello,
21 hello. The Court didn't hear what you said. You keep
22 rambling. And we can't -- can you hear me? Okay. The
23 Court didn't understand what you were saying about the
24 defendant. So wait, wait, wait. No, no, no, stop. I
25 need to put you back on speaker, but you have to speak

1 slowly for the court reporter, Okay?

2 Okay. Hold on.

3 THE COURT: Okay. So the last thing you said
4 about Ms. Herrling that we need to understand?

5 MS. WILLIAMS: Yes, ma'am. I would like the
6 Court to understand that I honestly feel in reading
7 everything and seeing how she's (inaudible) and
8 processing everything, this could have been literally
9 somebody. You know, me and my husband, you know, we
10 were financially -- it goes a long way. You know what
11 I'm saying, knowing how to protect yourself from any
12 kinds of crimes. (Inaudible) -- it is a long way.

13 THE COURT: Can I ask you to interrupt her.

14 THE COURTROOM DEPUTY: Hello, hello, hello,
15 Ms. Williams, hold on. Hold on.

16 THE COURT: Thank you.

17 THE COURTROOM DEPUTY: Hello. Ms. Williams,
18 hold on. Hold on.

19 THE COURT: Okay. Thank you so much,
20 Ms. Williams. We are going to have to continue with the
21 hearing. But I do really thank you for your time and
22 while you were not here, Mr. Brown also did I thought
23 quite a compelling job of explaining the effects.

24 MS. WILLIAMS: Can I finish the last part of my
25 sentence that I just wanted the Court to know that this

1 lady is a big manipulator and a con artist. And she's
2 gotten away with whatever she can get away with using
3 the dead, and misusing their wishes and taking advantage
4 of people, and that they need to know that she --
5 obviously, she knows how to use her words and
6 everything, and knows how to manipulate people around
7 the authority; that she, obviously, was branded or
8 something. And those people hold her accountable, and
9 don't let this happen to anybody else. Thank you.

10 THE COURT: Thank you.

11 MS. WILLIAMS: Really really from my family and
12 Robert. I can provide for my baby brothers, myself, my
13 family. Don't let her get away with it.

14 THE COURT: Thank you. Thank you,
15 Ms. Williams.

16 THE COURTROOM DEPUTY: Okay. Thank you. We're
17 going to hang up now. Okay. Bye-bye.

18 THE COURT: Okay. The -- the -- do the parties
19 need to be heard further?

20 MR. KESSEL: No, Your Honor.

21 THE COURT: No. Okay. Thank you. The factors
22 that the Court -- the Court finds most compelling in
23 this case are the nature and circumstances of the
24 offense and the history and characteristics of the
25 defendant. We need for the sentence to reflect the

1 seriousness of the offense to promote respect for the
2 law and provide just punishment, afford adequate
3 deterrence for criminal conduct, and protect the public
4 from further crimes of the defendant.

5 Reprehensible and immoral. These are the words
6 that Ms. Herrling, that you used to describe your
7 conduct. The Court actually finds it difficult to find
8 words appropriate to describe the seriousness of this
9 offense.

10 The Court finds particularly serious the
11 persistence with which Ms. Herrling engaged in these
12 offenses and the planning and sophistication that it
13 took. But I think what you may have been referring to,
14 Ms. Herrling, and what this Court finds particularly
15 reprehensible was how Mr. Wilding was treated. Charles
16 Wilding was a man. He was a human being. He may not
17 have had much in the way of family and friends, but his
18 life had meaning and purpose, the way all of our lives
19 do. But Ms. Herrling apparently did not see that. She
20 used him as a cash register and when she was done with
21 him, hacked him to pieces with as little fan fair as one
22 would do to an old cash register that no longer worked.

23 Similarly, the tragic death of Mr. Tascon and
24 the emotional anguish that he and his wife suffered is a
25 reminder that even a fraud crime, sometimes you've

1 euphemistically referred to as a white collar crime, can
2 have devastating affects on its victims, even if no
3 enhancement applies for causing a death. Pain that Mr.
4 Tascon's widow faces due to the loss of her husband and
5 the extreme stress caused by Ms. Herrling's crime, which
6 precipitated his death, and the fact that the last
7 period of time she had with him was overshadowed by the
8 stress that had been caused by this crime, all of that
9 are factors that this Court considers in determining the
10 seriousness of this offense.

11 On the other hand, the Court does consider as
12 mitigation the sealed material that I discussed with
13 counsel at sidebar as well as the health concerns and
14 Ms. Herrling's experiences while in custody.

15 Do the parties have any legal objections to the
16 Court imposing sentence?

17 MR. BROWN: No, Your Honor.

18 MR. KESSEL: No, Your Honor.

19 THE COURT: Does either counsel know of any
20 reason why sentence should not now be imposed?

21 MR. KESSEL: No, Your Honor.

22 MR. BROWN: No, Your Honor.

23 THE COURT: I will now state the sentence: I
24 find that the following sentence is reasonable, and is
25 sufficient, does no greater than necessary to comply

1 with the purposes stated in Title 18 of the United
2 States Code, Section 3553, Subdivision A.

3 It is ordered that the defendant shall pay to
4 the United States a special assessment of a hundred
5 dollars, which is due immediately. Any unpaid balance
6 shall be due during the period of imprisonment at the
7 rate of not less than \$25 per quarter and pursuant to
8 the Bureau of Prisons Inmate Financial Responsibility
9 Program.

10 It is ordered that the defendant shall pay
11 restitution in the amount of \$3,887,051, pursuant to
12 Title 18 of the United States Code, Section 3663(A).
13 The amount of restitution shall be paid as follows:
14 Charles and June Wilding: \$447,051; Jackie Lowenstein:
15 \$1,000,920; Robert Tascon: \$1,500,000.

16 Restitution shall be due during the period of
17 imprisonment at the rate of not less than \$25 per
18 quarter pursuant to the Bureau of Prisons Inmate
19 Financial Responsibility Program.

20 If any amount of the restitution remains unpaid
21 after release from custody, nominal monthly payments of
22 at least \$100 shall be made during the period of
23 supervised release.

24 These payments shall begin 90 days after the
25 commencement of supervision.

1 Nominal restitution payments are ordered as the
2 Court finds that the defendant's economic circumstances
3 do not allow for either immediate or future payment of
4 the amount ordered.

5 If the defendant makes a partial payment, each
6 payee shall receive approximately proportional payment
7 unless another priority order or percentage payment is
8 specified in the judgment.

9 Pursuant to Title 18 of the United States Code,
10 Section 3612, Subdivision F.3.A., interest on the
11 restitution ordered is waived, because the defendant
12 does not have the ability to pay interest.

13 Payments may be subject to penalties for
14 default and delinquency pursuant to Title 18 of the
15 United States Code, Section 3612, Subdivision G. The
16 defendant shall comply with Second Amended General Order
17 Number 20-04. Pursuant to Guideline 5E1.2, Subdivision
18 A, all fines are waived as the Court finds that the
19 defendant has established that she is unable to pay and
20 is not likely to become able to pay any fine. The Court
21 has found that the property identified -- I understand
22 that the Government has withdrawn the forfeiture.

23 MR. BROWN: That's right, Your Honor. There is
24 no equity left in it.

25 THE COURT: Thank you. Pursuant to the

1 Sentencing Reform Act of 1984, it is the judgment of the
2 Court that the defendant, Caroline Joanne Herrling, is
3 hereby committed on Count 1 of the information to the
4 custody of the Bureau of Prisons for a term of
5 240 months.

6 The Court recommends that the defendant be
7 considered for participation in the Bureau of Prisons
8 Residential Drug Abuse Program. The Court recommends
9 that the Bureau of Prisons conduct a mental health
10 evaluation of the defendant and provide all necessary
11 treatment.

12 Upon release from imprisonment, the defendant
13 shall be placed on supervised release for a term of
14 three years under the following terms and conditions:
15 One, the defendant shall comply with the rules and
16 regulations of the United States Probation and Pretrial
17 Services Office and Second Amended General Order 20-04,
18 including the conditions of probation and supervised
19 release set forth in Section 3 of General -- Second
20 General -- excuse me, Section 3 of Second Amended
21 General Order 20-04.

22 During the period of community supervision, the
23 defendant shall pay the special assessment and
24 restitution in accordance with this judgment's orders
25 pertaining to such payment.

1 The defendant shall cooperate in the collection
2 of a DNA sample from the defendant. The defendant shall
3 apply all monies received from income tax refunds,
4 lottery winnings, inheritance, judgments, and any other
5 financial gains to the Court-ordered financial
6 obligation.

7 The defendant shall refrain from any unlawful
8 use of a controlled substance.

9 The defendant shall submit to one drug test
10 within 15 days of release from custody and at least two
11 periodic drug tests thereafter, not to exceed eight
12 tests per month as directed by the probation officer.

13 The defendant shall participate in an
14 out-patient substance abuse and treatment and counseling
15 program. That includes urinalysis, breath or sweat
16 patch testing as directed by the probation officer. The
17 defendant shall abstain from using alcohol and illicit
18 drugs and from abusing prescription medications during
19 the period of supervision.

20 During the course of supervision, the probation
21 officer, with the agreement of the defendant and Defense
22 counsel, may place the defendant in a residential drug
23 treatment program approved by the probation, U.S.
24 Probation and Pretrial Services Office for treatment of
25 narcotic addiction or drug dependency, which may include

1 counseling and testing to determine if the defendant has
2 reverted to the use of drugs. The defendant shall
3 reside in the treatment program until discharged by the
4 program director and probation officer.

5 As directed by the probation officer, the
6 defendant shall pay all or part of the cost of the
7 Court-ordered treatment to the aftercare contractors
8 during the period of community supervision.

9 The defendant shall provide payment and proof
10 of payment as directed by the probation officer. If the
11 defendant has no ability to pay, no payment shall be
12 required.

13 Sorry, Counsel, did you need a moment with your
14 client?

15 MR. KESSEL: No, I'm fine. Thank you.

16 THE COURT: Okay. When not employed or excused
17 by the probation officer for schooling, training, or
18 other acceptable reasons, the defendant shall perform
19 20 hours of community service per week as directed by
20 the Probation and Pretrial Services Office.

21 The defendant shall not be self-employed nor be
22 employed in a position that does not provide regular pay
23 stubs with the appropriate deductions for taxes unless
24 approved by the probation officer.

25 The defendant shall not obtain or possess any

1 driver's license, social security number, birth
2 certificate, passport, or any other form of
3 identification in any name other than the defendant's
4 true, legal name nor shall the defendant use any name
5 other than the defendant's true, legal name without the
6 prior written approval of the probation officer.

7 The defendant shall not be employed in any
8 position that requires licensing or certification by any
9 local, state, or federal agency without the prior
10 written approval of the probation officer.

11 Defendant shall submit defendant's person, and
12 any property, residence, vehicle, papers, computer,
13 other electronic communication or data storage devices
14 or media or effects to search and seizure at any time of
15 the day or night by any law enforcement officer or
16 probation officer with or without a warrant and with or
17 without cause.

18 If stopped or questioned by a law enforcement
19 officer for any reason, defendant shall notify that
20 officer that defendant is on federal supervised release
21 and subject to search with or without cause.

22 The defendant shall participate in mental
23 health treatment, which may include evaluation and
24 counseling until discharged from the program by the
25 treatment provider with the approval of the probation

1 officer.

2 The Court authorizes the Probation and Pretrial
3 Services Office to disclose the presentence report to
4 the substance abuse treatment provider to facilitate the
5 defendant's treatment for narcotic addiction or drug
6 dependency.

7 Further redisclosure of the presentence report
8 by the treatment provider is prohibited without the
9 consent of the sentencing judge.

10 The Court authorizes the probation officer to
11 disclose the presentence report and any previous mental
12 health evaluations or reports to the treatment provider.
13 The treatment provider may provide information,
14 excluding the presentence report, to state or local
15 social service agencies such as the state of California,
16 Department of Social Service for the purpose of the
17 client's rehabilitation.

18 Counsel, as you heard, the Court has already
19 recommended that Ms. Herrling be placed in the
20 residential treatment program. Did you have a
21 recommendation that you wanted the Court to provide
22 concerning the location of Ms. Herrling's incarceration?

23 MR. KESSEL: Just that it's somewhere in
24 Southern California, Your Honor.

25 THE COURT: I'm sorry. In Southern California,

1 okay. And I assume that's because that's closest to her
2 means of support?

3 Okay. The defendant is remanded to the custody
4 of the United States Marshal. I trust there are no
5 remaining counts to be dismissed.

6 MR. BROWN: No, Your Honor. The Government
7 moves to dismiss the remaining counts of the indictment.

8 THE COURT: Thank you.

9 MR. BROWN: The information, Your Honor.

10 THE COURT: Thank you. The remaining counts
11 are dismissed. Does either counsel have anything
12 further before I address the issue of appeals or provide
13 my final comments to Ms. Herrling?

14 MR. KESSEL: No, Your Honor.

15 MR. BROWN: No, Your Honor.

16 THE COURT: The Statement of Reason shall be
17 included in the Commitment Order and Judgment and shall
18 be provided to the probation officer. The probation
19 office, the United States Sentencing Commission, and the
20 Bureau of Prisons. A complete copy of the presentence
21 report shall be provided to the Bureau of Prisons and
22 the sentencing commission. Any other copies of the
23 report and related materials shall remain confidential.
24 If an appeal is taken, counsel on appeal shall have
25 access to the report.

1 Ms. Herrling, you do have a right to appeal
2 your conviction, if you believe that your guilty plea
3 was somehow unlawful or involuntary, or if there was
4 some other fundamental defect in the proceedings that
5 was not waived by your guilty plea. You also have a
6 right to appeal your sentence under some circumstances,
7 particularly if you think your sentence is contrary to
8 law. However, a defendant may waive those rights as
9 part of a plea agreement and you have entered into a
10 plea agreement that waives some or all of your right to
11 appeal your conviction and your sentence. Such waivers
12 are generally enforceable. And the plea agreement
13 controls your right to appeal. If you believe the
14 waiver is unenforceable, you can present that theory to
15 the Court of Appeals.

16 If you retained any right to appeal with few
17 exceptions, a Notice of Appeal must be filed within
18 14 days of judgment being entered. Do you understand
19 that?

20 THE DEFENDANT: Yes.

21 THE COURT: And I'll just need you to speak
22 into the microphone.

23 THE DEFENDANT: Yes, I do.

24 THE COURT: Okay. Thank you. If you are
25 unable to provide -- to afford a transcript of the

1 record in this case, one will be provided at the
2 Government expense. If you are unable to pay the cost
3 of an appeal or the filing fee, you may apply for leave
4 to file an appeal in forma pauperis. If you do not have
5 counsel to act on your behalf and if you request it, the
6 Clerk of the Court will prepare and file a Notice of
7 Appeal on your behalf. You must make the request within
8 14 days. The Notice of Appeal must designate the
9 judgment or order appealed from and the fact that you
10 are appealing to the Court of Appeals.

11 It should designate the portion of the
12 proceedings not already on file that you deem necessary
13 for the reporter to include.

14 Anything further from counsel before I address
15 Ms. Herrling for the final time?

16 MR. BROWN: No, Your Honor. Thank you, Your
17 Honor.

18 MR. KESSEL: The defendant would like the clerk
19 to file a Notice of Appeal and, obviously, I'm not her
20 counsel on appeal. She would like appointment of
21 counsel.

22 THE COURT: Thank you.

23 I'm not exactly sure about the mechanics with
24 respect to the request for the -- both the request for
25 counsel and the request for the filing of the Notice of

1 Appeal. So I will advise the courtroom deputy clerk to
2 handle the filing of the notice of the appeal to the
3 extent that there is anything further that I need to do
4 in order to authorize counsel to be appointed to
5 Ms. Herrling for purposes of appeal, then we can handle
6 that perhaps in a separate proceeding or by separate
7 filing.

8 Just a moment.

9 Counsel, is it possible, even though you're not
10 going to be her counsel on appeal, is it possible for
11 you to at least file the Notice of Appeal and then once
12 that process has started, I think at that point, that's
13 when the Court of Appeals, when you step out, that's
14 when the Court of Appeals would appoint counsel, or is
15 it your understanding it operates differently?

16 MR. KESSEL: Well, Your Honor, I've seen it --
17 I don't mind filing a Notice of Appeal. I just don't
18 want to -- then the Ninth Circuit will look to me to see
19 if I'm counsel. I ask that you relieve me for appeal
20 purposes, but I'd be happy to file a Notice of Appeal
21 for her.

22 THE COURT: And were you appointed in this
23 matter?

24 MR. KESSEL: No.

25 THE COURT: You're retained, but you're asking

1 to be released?

2 MR. KESSEL: For trial level only.

3 THE COURT: I understand.

4 Mr. Brown?

5 MR. BROWN: I just think it's ordinarily done,
6 the Defense counsel files the notice and I would
7 actually like to talk to him before he does, and I don't
8 think there's any reason for Your Honor to intervene in
9 the normal process and do it immediately. It should go
10 the normal way by filing out of court.

11 THE COURT: Okay. Well, Mr. Kessel has
12 indicated that he doesn't have an objection to filing
13 the Notice of Appeal so we'll proceed with that,
14 meaning, obviously, if something comes up, and for some
15 reason that is not appropriate, then you can advise the
16 Court.

17 Anything further, Mr. Kessel?

18 MR. KESSEL: No, Your Honor.

19 THE COURT: Okay. Thank you.

20 Thank you very much for that. And I guess I
21 would just end with this --

22 MR. KESSEL: One second.

23 THE COURT: Yes.

24 MR. KESSEL: Your Honor, I'm sorry. Excuse me,
25 Your Honor. Thank you.

1 THE COURT: Let me just end with this: As I
2 stated earlier, all of our lives have meaning and
3 purpose. And this is true for you no less than anyone
4 else who's here. You indicated here that you're a new
5 woman, and that your sobriety has given you a clarity of
6 purpose that you never had before. And I think you are
7 to be commended for the sobriety that you've
8 experienced. As you described for us, this is probably
9 the longest period of sobriety that you've had, and I
10 can only imagine that it's been very hard fought, and so
11 you are to be commended for that, and it's something
12 that you should be proud of.

13 I acknowledge that the road ahead completing
14 your time in custody will not be easy, but I genuinely
15 wish you all of the best in completing your sentence and
16 discovering your true purpose. With that, I do want to
17 thank everybody for their patience today. I
18 particularly want to thank the court staff and the
19 marshals for their patience, because the Court went very
20 late today, and I appreciate everyone understands the
21 seriousness of the matter today. And, with that, the
22 Court is adjourned. Thank you.

23 (Whereupon, proceeding adjourned.)

24 - - -

C E R T I F I C A T E

UNITED STATES OF AMERICA :
vs. : No. CR 23-00059-MEMF
CAROLINE JOANNE HERRLING :

I, MARIA BUSTILLOS, OFFICIAL COURT REPORTER, IN AND FOR THE
UNITED STATES DISTRICT COURT FOR THE CENTRAL DISTRICT OF
CALIFORNIA, DO HEREBY CERTIFY THAT PURSUANT TO SECTION 753,
TITLE 28, UNITED STATES CODE, THE FOREGOING IS A TRUE AND
CORRECT TRANSCRIPT OF THE STENOGRAPHICALLY REPORTED
PROCEEDINGS HELD IN THE ABOVE-ENTITLED MATTER AND THAT THE
TRANSCRIPT PAGE FORMAT IS IN CONFORMANCE WITH THE REGULATIONS
OF THE JUDICIAL CONFERENCE OF THE UNITED STATES.
FEES CHARGED FOR THIS TRANSCRIPT, LESS ANY CIRCUIT FEE
REDUCTION AND/OR DEPOSIT, ARE IN CONFORMANCE WITH THE
REGULATIONS OF THE JUDICIAL CONFERENCE OF THE UNITED STATES.

_____/s/_____
MARIA R. BUSTILLOS
OFFICIAL REPORTER

DATE

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